IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

WEDNESDAY, THE 11TH JULY 2007 / 20TH ASHADHA 1929

WP(C).No. 20977 of 2007(V)

OS.125/2004 of PRL.M.C.KOZHIKODE-I

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PETITIONER:

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1. CAPT.K.P.RAJAN, S/O.KRISHNA PILLAI,
   MASTER MARINER, 5/2661 A, JAFARKHAN COLONY,
   PLANATERIUM ROAD, KOZHIKODE-673 006.

2. PALAKKAL KRISHNAKUMAR,
   S/O.CAPT.K.P.RAJAN, 5/2661A, JAFARKHAN COLONY,
   PLANATERIUM ROAD, KOZHIKODE-673 006.

3. E.P.MOHANAN NAIR, S/O.LAKSHMI AMMA,
   "PADMAM", NELLIKODE HOUSING COLONY,
   CHEVAYOOR AMSOM DESOM, CHEVAYOOR P.O.,
   KOZHIKODE-673 009. (REPRESENTED BY POWER OF
   ATTORNEY HOLDER, THE 2ND PETITIONER HEREIN)

BY ADV. SRI.P.N.RAVINDRAN
SMT.PREETHY KARUNAKARAN
SMT.M.M.DEEPA
SRI.JAYKAR.K.S.

RESPONDENTS:

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1. U.K.JAYARAJ, S/O.LATE APPU,
   ULLATTIL HOUSE, KALTHINKUNNU AMSOM DESOM,
   U.K.SANKUNNI ROAD, KOZHIKODE.

2. NALINI, W/O.LATE APPU,
   ULLATTIL HOUSE, KALTHINKUNNU AMSOM DESOM,
   U.K.SANKUNNI ROAD, KOZHIKODE.

3. K.C.PRABHA SREEVALSAN,
   D/O.MOOLIYIL KOTTAYATH NARAYANAN, 'SEETHAL',
   BANK ROAD, KOZHIKODE-1.

4. K.C.PRAKASH NARAYANAN,
   S/O.MOOLIYIL KOTTAYATH NARAYANAN, 'SEETHAL',
   BANK ROAD, KOZHIKODE-1.

5. K.C.RAMESH NARAYANAN,
   S/O.MOOLIYIL KOTTAYATH NARAYANAN, 'SOURAB',
   VENGERI, KOZHIKODE-10.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 11/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N.KRISHNAN, J.

WP(C)No. 20977 OF 2007 V

Dated this the 11th July, 2007.

JUDGMENT

This writ petition is filed seeking to set aside the order of the learned Principal Munsiff, Kozhikode in I.A.3474/05 in O.S.125/04. It was an application filed under Section 10 of the CPC to stay O.S.125/04 till the disposal of O.S.725/01 pending before that court. The court, on a consideration of the materials found that the subject matter is the same and it requires a stay under Section 10 of the CPC and therefore allowed the application. It is against that decision defendants 1 and 2 in the suit had come forward with this writ petition. At the outset, I may like to state that the allegation against defendants 1 and 2 is only with respect to giving aid to the defendants 3 and 4 for an attempted trespass. The real dispute is between plaintiff and defendants 3 and 4 in the suit. I may refer to para 4 of the plaint in O.S.125/04 which shows "defendants 3 and 4 had filed a suit as O.S.725/01 on the file of this Honourable Court as against the plaintiffs herein, contending that they are entitled to the plaint schedule property and praying for a decree for declaration of their alleged right in respect of the property and for a consequential injunction restraining the

plaintiffs herein from trespassing into the property described in the schedule of the said plaint." There are two items of properties, A and B schedule therein. So there is common point that arises for consideration and it cannot be bifurcated. Therefore, I find that the court below was perfectly justified in ordering stay of O.S.125/04 and neither the plaintiffs in O.S.125/04 nor defendants 3 and 4 had come forward with any revision or writ petition before this Court challenging the case of stay under Section 10 of the Civil Procedure Code. Therefore there is nothing to interfere with the order of the learned Munsiff and the writ petition is dismissed.

M.N.KRISHNAN
Judge

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